COURT NO. 2

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No. 157 of 2003

National Insurance Company Ltd.
Haldwani. ….. **Appellant.**

Versus

Smt. Parwati Devi Chowdhary
and another. ….. **Respondents.**

Mr. B.K.Gupta, learned counsel for the appellant.
Mr. J.C.Pande, learned counsel for the respondent No.1.
Mr. S.N.Babulkar, Sr.Advocate, learned counsel for Respondent No.2

Coram : Hon'ble P.C. Verma, J.
Hon'ble B.C. Verma, J.

This appeal has been preferred by the Insurance Company under Section 30 of the Workmen's Compensation Act ***(in short the Act)*** against the judgment and Award, dated 12-5-2003, passed in W.C. Case No. 11 of 2001, Smt. Parwati Devi Vs. Sri Jagdish Chandra Pandey and another, by the Workmen Compensation Commissioner Kumaun Region, Haldwani, Nainital ***(hereinafter referred to as the Commissioner),*** whereby the learned Commissioner has awarded a sum of Rs. 1,53,090/- along with interest of Rs. 53,581/- (total Rs. 2,06,671) in favour of the claimants as against the Opposite Party No.2-appellant. Aggrieved, the Insurance Company has come up in appeal before this Court with a prayer to set aside the impugned judgment and award mainly on the ground that death of the driver had not occurred in the course of his employment and the case was not covered under the Workmen's Compensation Act.

Brief facts of the case are that Smt. Parwati Devi and others have filed claim petition before the learned Commissioner with the allegations that Ramesh Chandra Chaudhary was employed

under employment of O.P.No.1 as driver of K.M.O.U. Ltd. bus no. UP 01-0643, who has died in the accident no. 19.7.2000 in the course of his employment. He was getting Rs.2200/- per month as salary and was aged 45 years at the time of his death, hence the claim petition. The O.P.No.1 filed his written statement and has admitted the allegations made in the claim petition. It has also been asserted that the vehicle was insured with the O.P.No.2 and the driver of the bus (the deceased) was holding a valid driving licence, therefore, the Insurance Company is liable to pay the compensation. O.P.No.2-appellant also filed its written statement and asserted that the claimant and employer should satisfy the court about employment, age, pay, etc. and proof of insurance.

Before the learned Commissioner, the claimants have filed documentary evidence of inquest report and post mortem report of the dead body, F.I.R., dependency of deceased, driving licence, Insurance Cover Note, etc. and have examined Smt. Parwati Devi, widow of the deceased in the witness box. This witness has proved all necessary documents. She was cross-examined by the appellant-Insurance Company. The Insurance Company has also produced surveyor Chandrapal Singh Tomar before the Commissioner. After considering the entire evidence before him and after hearing the arguments advanced on behalf of the claimants and the Insurance Company-appellant the learned Commissioner has come to the conclusion that the death of the deceased Ramesh Chandra Chowdhary has occurred in the course of his employment under O.P.No.1 and the vehicle was found to be duly insured at the time of accident. The salary of the deceased was proved on record to be Rs. 2200/- per month, but for purposes of compensation under the Act, the same was taken as Rs.2,000/-. The age of the deceased was held to be 50 years at the time of accidental death, therefore, as per Schedule under the Act, the Commissioner has ultimately awarded compensation worth Rs. 2,06,671/- including the interest from the date of accident dated 19-2-2000 till 5.2.2003 in favour of claimants and against the appellant-insurance company.

We have heard learned counsel for the appellant as well as learned counsel for the respondent nos.1 and 2 have carefully gone through the entire record including the impugned judgment and award.

The main argument advanced by the learned counsel for the appellant before us is that the claimants failed to prove that the death of Ramesh Chandra Chowdhary, the deceased, has occurred in the course of his employment as driver of the O.P.No.1, therefore, the appellant is not liable to pay compensation. The learned counsel has made reference to the report of surveyor dated 15.6.2001. We have considered the entire point in controversy with the help of the material on record. The surveyor of the Insurance Company has been examined on oath in the court below. The witness of the appellant, Chandrapal Singh Tomar, was cross-examined at length. This witness in his cross-examination has admitted that he has not explained as to how the dead body had reached at the police station Lalkuan. This witness has based the information in the survey report on the basis of F.I.R. lodged by conductor of the bus. But the surveyor of the appellant has not made any serious attempt to record the statement of the said conductor. We also find that this witness has given shaky statement in his cross-examination on material points. The most important aspect of the case is that the witness of the claimants Smt. Parwati Devi has been cross-examined by the appellant-Insurance Company. She has categorically denied the suggestion that her husband has not died in the course of employment. No suggestion has been put to this witness so as to indicate that the deceased has died not in the course of his employment. Taking into consideration the entire evidence in its totality, led by both the parties before the Commissioner, we are of the opinion that it has been proved on record that the deceased has died during the course of his employment as driver. There is plethora of evidence in favour of the claimant-respondent on record, therefore, the dependent/legal heirs of the deceased were entitled to

get compensation. Since the vehicle, i.e. K.M.O.U. bus was duly insured at the time of accident, therefore, the liability has been rightly fastened on the insurer-appellant. We do not find any merit in this appeal.

No other point was urged or argued before us.

Accordingly, the appeal is dismissed. The judgment and order, under appeal, is upheld. No order as to costs.

The amount, if any, in deposit with this Court be remitted to the Workmen Commissioner concerned, for being paid to the claimants.

(B.S. Verma, J.) **(P.C. Verma, J.)**

28-08-2004
RCP